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In re: **KZNZ(FM), Kasilof, AK**
Facility ID No. 78420
File No. BAPH-20060615ACZ

**Application for Assignment of
Construction Permit
Petition to Deny**

Dear Counsel:

We have before us the above-captioned application (“Assignment Application”) proposing to assign the construction permit of Station KZNZ(FM), Kasilof, Alaska, from Northern Radio, Inc. to KSRM, Inc. (“KSRM”). On July 19, 2006, Peninsula Communications, Inc. (“PCI”), the licensee of KPEN-FM, Soldotna, Alaska, and KXBA(FM), Nikiski, Alaska, filed a Petition to Deny the Assignment Application.¹ For the reasons stated below, we deny the Petition to Deny and grant the Assignment Application.

Background. PCI states that grant of the Assignment Application would add to KSRM’s “already anti-competitive group of stations,”² providing KSRM with an unfair advantage over its competitors. PCI also argues that the proposed transaction would violate Section 73.3555 of the Commission’s Rules.³

¹ KSRM filed an Opposition on August 1, 2006, and PCI filed a Reply on August 15, 2006.

² Petition to Deny at 2.

³ 47 C.F.R. § 73.3555.

Discussion. With regard to PCI’s competition claims, we initially note that Station KZNZ(FM) is not located in a market that is rated by Arbitron. In its extensive review of the broadcast ownership rules,⁴ the Commission determined that, where transactions involve non-Arbitron rated markets, it would continue to apply its contour-overlap methodology, with certain modifications, to determine compliance with the local radio ownership rule.⁵ While acknowledging that aspects of this methodology are problematic, the Commission concluded that “its temporary use during the pendency of [its ongoing] rulemaking proceeding cannot be avoided.”⁶

PCI argues that, in following the Commission’s current methodology for determining the relevant market, KSRM has “concoct[ed] its idea of what it deems to be the relevant stations in the Kenai and Soldotna radio market for the purposes of the Commission’s current and previous ownership rules.”⁷ PCI argues that the relevant market for the Assignment Application should be a “Central Kenai Peninsula market.” PCI’s sole argument for adoption of such a market definition is that, in an April 3, 1992, Petition to Deny the application for assignment of license of KSLD(AM), Soldotna, Alaska, from King Communications to Cobb Communications, Inc.,⁸ KSRM, as licensee of Stations KSRM(AM), Soldotna, Alaska and KWHQ-FM, Kenai, Alaska, asserted that “Kenai and Soldotna comprise one market, the Central Kenai Peninsula.”⁹ This contention by KSRM in its 1992 Petition to Deny was made prior to the adoption of the Commission’s current local radio ownership rule,¹⁰ and is in no way determinative of the appropriate methodology that the Commission uses to ascertain compliance with the local radio ownership limits. Accordingly, we find that PCI’s argument is without merit.

Staff review confirms that the proposed transaction forms one radio market, in which KSRM would own three FM stations and two AM stations in a 15-station market.¹¹ In a local radio market with between 15 and 29 stations, a single owner may own up to six commercial stations, no more than four of which are in the

⁴ See 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order, 18 FCC Rcd 13620 (2003) (“Ownership Report and Order”), *aff’d in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (3d Cir. 2004), *cert denied*, 125 S. Ct. 2902, 2903, 2904 (2005). See also *Prometheus Radio Project, et al. v. F.C.C.*, No. 03-3388 (3d Cir. Sept. 3, 2004) (lifting stay with respect to new local radio ownership rule).

⁵ See *Ownership Report and Order*, 18 FCC Rcd at 13729-30 and 13870-73.

⁶ *Id.* at 13729.

⁷ Petition to Deny at 2.

⁸ File No. BAL-19920224EH.

⁹ Petition to Deny at 4.

¹⁰ As KSRM points out, PCI fails to acknowledge that the local radio market rules were vastly different in 1992. In 1992, ownership of two AM stations in the same market was prohibited by the multiple ownership rule. See 47 C.F.R. § 73.3555(a)(1) (1992).

¹¹ Post-transaction, the five stations that KSRM would own are KZNZ(FM), Kasilof, Alaska, KSRM(AM), Soldotna, Alaska, KSLD(AM), Soldotna, Alaska, KKIS-FM, Soldotna, Alaska and KWHQ-FM, Kenai, Alaska.

same service.¹² Accordingly, the proposed transaction complies with the local radio ownership limits in the subject market.

Conclusion/Actions. Based on the above, we find that the PCI has not raised a substantial and material question of fact warranting further inquiry. We further find that KSRM, Inc. is qualified as the assignee and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Peninsula Communications, Inc. IS DENIED, and that the application to assign the construction permit of Station KZNZ(FM), Kasilof, Alaska (File No. BAPH-20060615ACZ) from Northern Radio, Inc. to KSRM, Inc. IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
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¹² 47 C.F.R. § 73.3555(a)(1)(iii).